IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4689 OF 2007

Dr.Harshad N. Pandya..... ....Petitioner
V/s
The Linking Road CHS Ltd. & Anr..... ....Respondents.

Mr.S.U.Kamdar, Sr.Counsel with Mrs.Anita Cardilino i/by M/s.Pandya & Co., Advs. for the petitioner.

Ms.Smit Patel Party-in-person for respondents.

Mr.S.K.Chincholiar, AGP for respondent No.2.

CORAM: A.P.DESHPANDE, J.
31/8/07

PC:

Rule. Rule made returnable forthwith.

Taken up for final disposal by consent of both the parties.

By this petition the petitioner questions the legality and propriety of the order dated 16.4.07 passed by the Maharashtra State Cooperative Appellate Court, Mumbai dismissing the revision filed by the present petitioner. The revision application was directed against an order passed by the Cooperative Court, inter alia, rejecting the Miscellaneous Civil Application moved by the present petitioner seeking simultaneous trial and disposal of two disputes pending on the file of Cooperative Court instituted by the petitioner against the respondent-society.

2. The case No.CC-22/101/2000 is the dispute filed by the present petitioner for declaration that the resolution passed by the General Body in the Annual General Meeting on 10.1.88 and resolutions at Exs.2, 3, 4, 5, 7 and 10 (Collectively) as well as three memorandum of

understandings (MOUs) are subsisting, valid and having binding force. The case of the petitioner is that the society had resolved to enter into a contract for development of property with the petitioner in pursuance of which the three MOUs are executed between the parties. After the first dispute was filed the petitioner moved an application therein and claimed temporary injunction seeking to restrain the society from obstructing the disputant from implementing the three MOUs. The temporary injunction order granted by the trial Court was challenged by filing an appeal in the Cooperative Appellate Court and the Cooperative Appellate Court directed to maintain status quo. Pending the first dispute respondent convened a Special General Body Meeting on 2.10.03 and took a decision to revoke and cancel the three MOUs and the resolutions on the basis of which the said MOUs were entered into. On account of cancellation of MOUs in the special general body meeting held on 2.10.03 the petitioner filed yet another dispute bearing No.CC-2/204/06 challenging the action of cancellation of MOUs and the resolution passed in the said special general body meeting dated 2.10.03. As both the disputes were pending in the same Court between the same parties the petitioner moved an application as stated herein above for joint trial of both the disputes which application has been rejected by the Cooperative Court and the revision directed against the same has been dismissed by the Cooperative Appellate Court. Hence this petition. Pending consideration of writ petition by an ad-interim order dated 22.6.07 this Court directed the trial Court to proceed with the matter. However the Cooperative Court was directed that the matter shall not proceed with the cross examination of the petitioner. I am informed at the bar that in both the disputes stage of trial is reached and in both the disputes the petitioner has filed affidavit of examination in chief. It is thus clear that both the disputes are riped to proceed for cross

examination and trial.

3. Learned senior counsel Shri Kamdar appearing for the petitioner has submitted that what is required to be borne in mind while deciding the application praying for joint trial or simultaneous trial of two disputes is the element of convenience, likelihood of avoiding conflicting findings being recorded and avoiding duplication of recording of evidence. In the submission of the learned counsel the subject matter of both the disputes overlap in as much as the first dispute seeks to enforce the three MOUs whereas the subject matter of second dispute is legality and validity of action on the part of the society in revoking and canceling the three MOUs. It is submitted that by the very nature of subject matter of the disputes the issues overlap. It is also contended that if the dispute filed prior in point of time alone is to be heard then the dispute is bound to result in dismissal if the subsequent event of cancellation of MOUs is taken into account legality and validity of which is the subject matter in the second dispute. It is then submitted that by jointly trying both the disputes the respondent would in no way suffer any prejudice whereas if disputes are not tried together and disposed of simultaneously same is bound to cause prejudice to the present petitioner/disputant. Per contra the authorized person Ms.Smita Patel appearing for the respondent contended that the first dispute which has been filed way back in the year 2000 was dragged on by the petitioner and hence the said dispute need to be decided prior in point of time. It may not be out of place to point out that when the application was filed initially trial of dispute before the Cooperative Court filed in the year 2000 was riped for trial whereas the dispute filed in the year 2006 had not reached that stage. Hence it was one of the contentions raised before the Court below that directing joint trial would result in prolonging decision of the disputes. However now it is undisputed that both the disputes have

reached the stage of trial i.e. filing of affidavit of examination in chief by present petitioner who is disputant in both the disputes. The authorized person has supported the orders passed by the Cooperative Court and Cooperative Appellate Court dismissing the application for trial of the dispute simultaneously.

4. Perusal of the order passed by the trial Court and to be more precise, the concluding part of the order reveals that the Cooperative Court was of the view, as canvassed by the advocate Ms.Hegde, that the cause in the first dispute filed in the year 2000 does not really subsist in view of cancellation of three MOUs in the year 2003. The trial Court lost sight of the fact that the subject matter of the second dispute is the legality and validity of the action taken by the respondent-society in canceling the MOUs. If the present petitioner happens to succeed in the second dispute then the dispute filed prior in point of time would subsist for adjudication and the cause in the first dispute thus would subsist. So far as the revisional court is concerned it seems to be mainly impressed by the fact that the cause of action in both the disputes is different and hence a simultaneous or joint trial of two disputes has been held to be not necessary. While considering a prayer for clubbing of two disputes for joint trial. It is not necessary that the cause of action in both the suits/disputes need to be the same. What is to be seen is would it be convenient, just and proper to try both the disputes so that disputes can be finally and completely adjudicated upon. In the present case I am of the clear view that for complete and final adjudication of the issues in dispute a joint trial or simultaneous trial would advance the cause of justice. As both the suits have reached the stage of trial no prejudice or inconvenience of whatsoever nature would be caused to either of parties and moreso the respondent. The question of delay which was germane when the application was filed before the Cooperative Court is no longer

germane for the reason that both the disputes have reached the same stage and affidavit of examination in chief has already been filed by the present petitioner in both the disputes. It would be thus convenient, just and fair to order both the disputes to be heard and decided simultaneously. It cannot be lost sight of that the subject matter of both the suits is aimed at enforcing the three MOUs. The first dispute seeks implementation of MOUs whereas while pending first dispute MOUs are cancelled and revoked and second dispute goes to question the correctness of action of cancellation. It is thus clear that to a great extent the facts would overlap. The adjudication of issues arising in both the disputes can be effectively, finally and completely decided if both the disputes are tried together. The impugned order passed by the Cooperative Appellate Court rejects the application mainly on the ground that the cause of action in both the disputes are different. The said consideration, to me, appears to be wholly irrelevant. What is relevant for the purpose of adjudication of an application under section 10 of Code of Civil Procedure would not necessarily be relevant consideration for deciding an application for joint trial of disputes. Truly speaking the first dispute would survive only if and in case the petitioner succeeds in dispute filed subsequently in point of time. Seen from this angle as well it would be expedient to allow the application moved by the petitioner for clubbing of two disputes and their simultaneous hearing and disposal. In the result writ petition deserves to be allowed. The impugned order passed by the Cooperative Appellate Court so also order passed by the Cooperative Court deserve to be quashed and set aside as the same suffer from patent illegality and may result in miscarriage of justice if not interfered with. Hence impugned orders are quashed and set aside. Application moved by the petitioner at Ex.`D' is allowed. The trial Court is directed to proceed with the decision of the disputes as expeditiously

as possible, and at any rate, within a period of three months from today. Trial of the disputes be conducted on day-to-day basis to the extent possible. Rule made absolute in above terms with no order as to costs.

31.8.07